

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 367 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

GHANSHYAM TULSIRAM DHAKAD

Versus

STATE OF GUJARAT

Appearance:

MR KB PANDE for Petitioners

MR DN PATEL, APPP for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/10/98

C.A.V. JUDGEMENT

This revision application has been preferred on behalf of the applicants to set aside the judgment and order passed by the learned Addl. Sessions Judge, Godhra, District Panchmahals, on 17-6-1998 in Cri. Misc.

Application No.412 of 1998 and to enlarge them on default bail under sec.167 of Cr.P.C.

2. The briefly stated facts are as under:

On 26-5-1998 at about 19.55 hrs. a complaint was lodged by P.S.I. Shri B.C.Bhandari of Halol Police Station against the present applicants stating that, when Police were on duty of checking the vehicle for recovery of fine near Valley Hotel, the applicants were passing through the road in a hero honda motor cycle. As they did not stop the vehicle even after signal by Police, Police chased them. Applicants lost the balance and fell down while taking a turn and they tried to ran away. But P.S.I. fired two bullets and they were stopped. After completing the required formalities, search of the applicants and their vehicles were carried out by P.S.I. and Opium weighing 5.5 kgs. was found from the dickey of the said motor vehicle. Further procedure as required under the Narcotic Drugs and Psychotropic Substance Act (for short 'NDPS' Act) was followed by P.S.I. because the muddamal which has been recovered from the applicants is found to have contained the contraband article under the NDPS Act. Thereafter, said complaint was registered as Prohibition C.R. No.265 of 1998 dated 26-5-1998 for the offences punishable under sec.177 of Indian Penal Code and secs.8(c), 17, 18 and 49 of NDPS Act. Applicants were arrested and they were produced before the learned Judicial Magistrate, First Class (for short 'J.M.F.C. '), Halol. The learned J.M.F.C. remanded the applicants to Police custody for the period from 27-5-1998 to 2-6-1998 with a direction that they shall be produced before the Special Court, Panchmahals at Godhra. They were kept in judicial custody for the period from 2-6-1998 to 12-6-1998 by learned J.M.F.C., Halol.

3. Thereafter, the present applicants preferred an application being Misc. Cri. Application No.412 of 1998 for bail before the learned Addl. Sessions Judge, Panchmahals at Godhra, on the ground that after expiry of fifteen days remand period, applicants are in judicial custody by the order of learned J.M.F.C., Halol which is contrary to Cr.P.C. and also under sec.36(A) of NDPS Act and, at present also, they are in illegal judicial custody. Therefore, applicants are entitled to be released on bail.

4. After hearing the parties at length and on appreciation of evidence, learned Addl. Sessions Judge has rejected the above application. Therefore, the present revision application is filed to set aside the

judgment and order passed by learned Addl. Sessions Judge and to enlarge the applicants on bail.

5. I heard learned counsel for the applicants, Mr.K.B.Pande and learned APP for the State, Mr.D.N.Patel at length.

6. Learned counsel for the applicants has argued on the points which were contended in his pleadings at length alongwith authorities. Therefore, I do not think it necessary to repeat the same again at this stage. But the authorities cited by him will be discussed at later stage in this order. He has mainly relied upon the judgments reported in 1993(1) GLH page 861 in the case of Sardarsing Nagsing Rajput & others Vs. State of Gujarat and 1995(4) Supreme Court Cases page 190 in the case of Union of India Vs. Thamisharasi and Others. He has also drawn my attention towards the case reported in 1987 Cri. Law Reported 274 (Gujarat) in the case of Meghji Jethabhai Vankar and Others Vs. State of Gujarat in order to show the method of computation under Limitation Act as well as General Clauses Act. Relying upon the above reported cases, he has argued that, according to the provisions of Sec.36(A) of NDPS Act, detention of accused is illegal because the learned J.M.F.C., Halol has no power to extend the judicial custody after the expiry of fifteen days. Therefore, the order passed by the learned J.M.F.C. is without the sanction and authority of law and so, the applicants-accused are required to be released on bail forthwith. Lastly, he has argued that the present application is filed to release the applicants-accused on bail only on the ground of default clause and not on the basis of merits.

7. Learned APP has mainly argued that the present applicants are not entitled to be released on default bail because they were never remanded in judicial custody for more than fifteen days by the learned J.M.F.C., Halol. Therefore, there is no breach of provisions either of Cr.P.C. or of NDPS Act as averred and argued by the learned counsel for the applicants. He has also drawn my attention towards the relevant dates regarding the offence, filing of FIR, arrest of the applicants-accused, time and date of production of the accused before the learned J.M.F.C., Halol for asking the Police custody for further investigation and also the subsequent date when the applicants-accused were produced before the learned J.M.F.C., Halol. Relying on the above dates, he has argued that the applicants-accused were never remanded in judicial custody for more than fifteen days under any circumstances by the learned J.M.F.C.

and, therefore, it cannot be said that present judicial custody of the accused is illegal and without the sanction and authority of law. He has further argued that in view of the above facts and circumstances, the judgments relied upon by the learned counsel for the applicants will not be applicable in this case. Therefore, the applicants are not entitled to be released on default bail. As they have filed the present application only on the ground of default clause, the question of entering into the merits further does not arise. In the present case, the charge-sheet has already been filed in the Court within prescribed time and, therefore also, the applicants are not entitled to be enlarged on bail.

8. I have gone through the record and proceedings which have been shown to me by the learned counsel for the respective parties and also gone through the relevant provisions of Cr.P.C. and NDPS Act. It is revealed prima-facie from the record and proceedings that the accused were stopped and searched on 26-5-1998 and after following the requisite procedures, when it was found that applicants-accused were carrying the contraband articles under the NDPS Act, a complaint was lodged to that effect by the complainant before Halol Police Station which was registered as C.R. No.Prohi.265 of 1998 on 26-5-1998 at about 19.55 hours. The applicants-accused were produced before the learned J.M.F.C., Halol on 27-5-1998 at about 18.00 hours and learned J.M.F.C. has passed the order on the application submitted by the Investigating Officer and remanded them to Police custody for a period upto 2-6-1998 with a specific direction that accused shall be produced before the Special Judge, Panchmahals at Godhra. An intimation regarding the said order was sent to Chief Judicial Magistrate and Special Judge. It is established from the record and proceedings that applicants were again produced by the Investigating Officer before the learned J.M.F.C., Halol on 2-6-1998 at 12.10 hours and they were committed to judicial custody upto 12-6-1998 as the remand period was over on 2-6-1998. The present applicants-accused have submitted an application before the Court below on 11-6-1998 and claimed for default bail on the ground that they were remanded in judicial custody by the learned J.M.F.C., Halol for more than fifteen days.

9. On perusal of the provisions relied upon by the learned counsel for the respective parties, it appears that under the provisions of sec.36(A)(1)(b) of NDPS Act, the Magistrate has no power and authority to keep a

person in judicial custody exceeding fifteen days as a whole. As I have stated earlier, after perusing the record and proceedings, I am of the opinion that applicants-accused were never remanded in judicial custody by learned J.M.F.C., Halol exceeding fifteen days because initially from 27-5-1998 to 2-6-1998, applicants were remanded to Police custody and they were remanded to judicial custody from 2-6-1998 to 12-6-1998. Under any circumstances, it does not exceed the period of fifteen days and the application submitted by the applicants dated 11-6-1998 clearly shows that the application itself is premature and even they have submitted the above application prior to fifteen days.

10. Learned counsel for the applicants has mainly relied upon the judgments delivered by the Supreme Court of India in the case of Union of India Vs. Thamisharasi and others reported in 1995(4) Supreme Court Cases page 190. He has argued that in view of the above reported judgment of the Apex Court, applicants are entitled to be released on bail only on the ground of default clause. As I have discussed earlier, the applicants were never remained in judicial custody exceeding fifteen days and therefore, the benefit of the above judgments will not be available to the applicants. In that reported case, the complaint against the accused was not filed within the prescribed period of 90 days from the date of arrest of the applicants and, therefore, though specific provision has been made under the NDPS Act, the Apex Court has categorically observed that the applicants in that reported case were entitled to be released on bail only on the default clause and also observed that in that type of cases, provisions of sec.37 of NDPS Act would not apply.

11. There cannot be any dispute regarding the principles laid down by the Apex Court in the above reported judgments. But the facts remain that, here in this case, as per the arguments of the learned APP, the Police has filed the charge-sheet within the prescribed time and therefore, the applicants will not be entitled to get any benefit of above judgment, but the prosecution will be benefited. Learned APP has drawn my attention towards the judgment delivered by this Court reported in 1996(1) GLH page 987 in the case of Pramod Hariprasad Tiwari Vs. State of Gujarat. In that reported case, the application filed by the applicants were rejected on the ground that, on the day the order was passed, the charge-sheet was on record and therefore, the accused lost the indefeasible right. Likewise, in this case also, the charge-sheet has also been filed against the

applicants-accused. Therefore, I am of the opinion that the applicants-accused are not entitled to be enlarged on any ground.

12. Looking to the above facts and circumstances, the Criminal Revision Application is rejected. Notice is discharged.

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